

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KEVIN MOLLNER, as Next Friend of  
MILDRED MOLLNER,

Plaintiff, CIVIL CASE NO. 05-40056

v.

WAYNE COUNTY DEPARTMENT OF  
PUBLIC HEALTH,

HONORABLE PAUL V. GADOLA  
U.S. DISTRICT COURT

Defendant.

\_\_\_\_\_ /

**ORDER GRANTING DEFENDANT’S UNOPPOSED MOTION FOR SUMMARY  
JUDGMENT**

Before the Court is Defendant’s motion for summary judgment, filed on July 28, 2005. The proof of service for Defendant’s motion indicates that it was served on Plaintiff on the same day. Plaintiff has not filed a response opposing the motion. Local Rule 7.1(b) for the Eastern District of Michigan requires that a “respondent opposing a motion **must** file a response, including a brief and supporting documents then available.” E.D. Mich. Local R. 7.1(b) (emphasis added). Local R. 7.1(d)(1)(B) requires that responses to dispositive motions are due within twenty-one (21) days of service of the motion. E.D. Mich. Local R. 7.1(d)(1)(B). Accordingly, the response to this motion was due on approximately August 22, 2005. *See* Fed. R. Civ. P. 6(e). Since no response has been filed, the motion is unopposed.

The Court, having reviewed the filings in this case and the applicable law, determines that the Court will grant Defendant’s motion for the reasons stated in Defendant’s brief. Though

Defendant's motion is titled "Motion for Summary Judgment," the motion is actually a motion for dismissal for failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff currently has one claim against Defendant open in this Court: that Defendant violated federal statutory civil rights under 42 U.S.C. § 1983. In Defendant's brief arguing for the dismissal of Plaintiff's claim, Defendant observes that Plaintiff has not alleged a federal statutory or constitutional basis supporting her section 1983 claim. As the United States Supreme Court has "said many times, § 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Graham v. Connor*, 490 U.S. 386, 393-394 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n.3 (1979)). Since Plaintiff has not alleged a violation of a federal right independent from section 1983, Plaintiff has failed to state a claim upon which relief can be granted.

In addition, under section 1983, Defendant is not liable for the events in this case under a theory of respondeat superior. *See Doe v. Claiborne County*, 103 F.3d 495, 507 (6th Cir. 1996). Instead, Plaintiff must establish that Defendant had an official policy or custom that violated Plaintiff's constitutionally protected right. *See id.* As Defendant observed, Plaintiff has not alleged the existence of such policy or custom.

**ACCORDINGLY, IT IS HEREBY ORDERED** that Defendant's motion for summary judgment [docket entry 25] is **GRANTED** and Case No. 05-40056 is **DISMISSED**.

**SO ORDERED.**

Dated: September 30, 2005

s/Paul V. Gadola  
HONORABLE PAUL V. GADOLA  
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on September 30, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Richard J. Gianino; Lloyd G. Johnson; John A. Schapka, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: \_\_\_\_\_.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager  
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